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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Request for Contract Reformation]

FILE: B-201180

DATE: December 29, 1980

MATTER OF: Interracial Council for Business
Opportunity

DWG 05714

DIGEST:

Where Government contract contains express stipulation of amount to be paid, and there is no price adjustment clause, no basis exists for reforming contract to increase contract price. Fact that unforeseen recession occurred does not empower GAO to reform contract based upon equitable considerations.

The Interracial Council for Business Opportunity (ICBO) has requested reformation of its contract with the Department of Commerce (contract No. 4-36481) to increase the Federal share which is due to the ICBO under the cost sharing agreement. The ICBO argues on equitable grounds that those provisions of the contract which limit the percentage of costs which the Department of Commerce must reimburse to the ICBO should be deleted in their entirety.

We find no basis for granting the relief requested by the ICBO and, therefore, the request is denied.

The contract was a cost-reimbursement-type contract which called for partial reimbursement of allowable costs incurred by the ICBO. The ICBO was to serve as a national business development organization operating local business development organizations throughout the nation. The contract, as amended, called for performance by the ICBO from February 1, 1974, through December 31, 1975, and set a ceiling of \$1,820,010 on the total amount of the Federal payments which would be made to the ICBO. However, article IV of the contract, entitled "Allocation of Costs," provided that, in order to qualify for reimbursement of the maximum Federal share, the ICBO had to incur allowable costs under the contract in an amount equal to 75 percent of the ICBO's total operating budget for each year of the contract period. Article IV further stated, in pertinent part, that:

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"* * * If less than 75% of ICBO's operating budget is incurred for each year the Government will provide its funding based on the following ratios for each year:

<u>Location</u>	<u>Percentage of total costs</u>
National Office	6
Atlanta	49
Dallas	55
Los Angeles	62
Newark	53
New Orleans	68
New York	33
St. Louis	61
Washington, D.C.	53

On or before January 31, 1975, the Government shall determine the percentage of costs incurred by ICBO against its operating budget for the period February 1, 1974 through December 31, 1974, and adjust funding allocations in accordance with the above ratios."

During the period from February 1 to December 31, 1974, the ICBO did not meet the contractual spending objective of 75 percent of its total 1974 operating budget. Subsequently, the Department of Commerce conducted an audit of payments made to the ICBO on the basis of meeting the 75-percent objective and determined that ICBO had been overpaid \$378,130. The Department of Commerce requested the ICBO to repay this amount in accordance with the contract provisions.

The ICBO admits that it received payments in excess of the contract ceiling but stresses that we should reform the contract based upon equitable considerations. Basically, the ICBO argues that an unforeseen economic recession gripped the nation in 1974 and prevented the ICBO from spending 75 percent of its operating budget on allowable contract costs. The ICBO points out that the 1974 recession caused a shortfall in its receipt of private sector donations.

Moreover, since inflation had greatly increased the cost of goods and services during the recession period, the ICBO argues that it was forced to curtail spending for contract objectives in order to prevent its own bankruptcy. The ICBO argues that it maintained an extremely high level of effort throughout the contract period and that it should be paid the maximum amount because it was in "reasonable compliance" with the contract requirements.

It is well settled that a written contract is presumed to express the intention of the parties to it and, if clear on its face, it will be enforced as written. B-168032, April 14, 1972. In the present case, the contract was clear as to the amounts to be paid to the ICBO in the event that the contract objective of 75 percent of the total ICBO operating budget was not met. The contract contemplated that the 75-percent spending objective might not be reached and spelled out precisely what the Department of Commerce's cost sharing obligation would be in that event. Had the parties to the contract desired to make full payment contingent upon "reasonable compliance" or "best effort" by the ICBO, they could have incorporated that desire into the contract instead of agreeing to the payment schedule of article IV. While the 1974 recession may not have been foreseen by the ICBO, this does not entitle the ICBO to payment in excess of the contract terms. Generally, where a Government contract contains an express stipulation as to the amount of compensation to be paid, and there is no price adjustment clause, no basis exists for an increase in contract price even when performance in accord with the contract terms has become unprofitable. See Applied Energy, Incorporated, B-185990, March 16, 1976, 76-1 CPD 181.

Our Office is without authority to consider a request for modification, reformation, rescission or cancellation of a contract on equitable grounds. Moreover, no officer or employee of the United States is empowered to modify an existing Government contract to favor another party, or to surrender or waive some right inuring to the United States, except in receipt of some compensating benefit by the Government. See Lessor's FIART, L.D.B. and ISMEIM, B-185960, August 19, 1976, 76-2 CPD 175.

Moreover, although the ICBO states that the Department of Commerce was guilty of laches in not issuing its final audit report until January 1977 when the "Allocation of Costs" article contemplated that the audit adjustment would be made in January 1975, that does not provide any basis for reforming the contract to exclude the "Allocation of Costs" provision.

Accordingly, the ICBO's request for reformation of its contract with the Department of Commerce is denied.

A handwritten signature in cursive script that reads "Milton J. Fowler".

For the Comptroller General
of the United States